

15.0 GENERAL PROVISIONS

15.1 BINDING EFFECT & VESTING

This Agreement constitutes and shall be recorded as a covenant running with the land, benefiting and burdening the Project Site. This Agreement shall be binding upon and inure to the benefit of the Master Developer and the City and to the successors and assigns of the Master Developer and the City.

Pursuant to MPD Condition of Approval No. 159 of the MPD Permit Approval and per the Pre-Application and Development Agreement between the Master Developer and City dated April 16, 2009, the MPD Permit Approval is vested to and governed by the City code and standards in effect on June 28, 2009, the date the moratorium imposed by the City pursuant to Ordinance No. 08-885, was lifted by the City Council's adoption of Ordinance No. 09-913. All Development within The Villages MPD shall be implemented through Implementing Projects. The Implementing Projects of The Villages MPD shall be vested to and governed by the applicable BDMC provisions and other City standards in effect as of the date of the MPD Permit Approval. The applicable codes and substantive standards are included as Exhibit "E" and the MPD Permit Approval is included as Exhibit "C". Pursuant to BDMC 18.98.195(B) (Exhibit "E"), vesting as to stormwater regulations shall be on a Phase by Phase basis as outlined in Section 7 of this Agreement. Pursuant to BDMC 18.98.195(C) (Exhibit "E"), vesting as to conditions necessary to meet the fiscal impacts analysis criteria required by Section 18.98.060(B)(6)(c) shall only be for such period of time as is justified by the required updated analysis as outlined in Section 13.6 of this Agreement. Updated building codes will apply pursuant to Subsection 12.8.1.

In accordance with RCW 36.70B.180, during the Build-Out Period the City shall not impose upon The Villages MPD new or additional development standards except as set forth in this Agreement or to the extent required by a serious threat to public health and safety. Provided, however, that this Agreement can be amended during the Build-Out Period in accordance with the procedures in Section 10 of this Agreement and RCW 36.70B.170 through RCW 36.70B.210. Amendments of the MPD Permit Approval or this Agreement pursuant to Section 10 of this Agreement do not affect vesting.

15.2 DUTIES OF MASTER DEVELOPER

Pursuant to Condition of Approval No. 6 of the MPD Permit Approval, a single Master Developer (or Master Developer Transferee) shall be maintained throughout the life of this

**The Villages Master Planned Development
Draft Development Agreement**

~~Development~~ Agreement. The Master Developer shall function as a single point of contact for City billing purposes, shall function as a single authority for ~~Development~~ Agreement revisions and modifications, shall provide to the City proof of Master Developer approval of all Implementing Project ~~permit~~ applications (except building permits) filed by other parties prior to or with submittal to the City, and shall be responsible for distributing Development Agreement entitlements and obligations and administering such.

15.3 ASSIGNMENT

The parties acknowledge that the ~~development~~Development of The Villages MPD likely will involve sale, conveyance or assignment of portions of the Project Site to third parties who will own, develop and/or occupy portions of the Project Site and buildings thereon. BD ~~Villages~~Village Partners, LP shall have the right from time to time to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement or in The Villages MPD to a Master Developer Transferee acquiring an interest or estate in all or a portion of the Project Site, including a transfer of all interests through foreclosure (judicial or nonjudicial) or by deed in lieu of foreclosure; provided: (i) BD Village Partners gives the City thirty (30) days prior written notice of such assignment or transference; and (ii) BD Village Partners provides the City with a copy of the executed assignment or transference document within ten (10) business days of execution. Consent by the City shall not be required for any assignment or transfer of rights pursuant to this Agreement.

In any such transfer or assignment, if the transferee or assignee assumes the obligations herein pertaining to the property transferred or assigned, then the transferee or assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and BD Village Partners, LP shall thereupon be deemed released of liability under this Agreement for the portion of the property transferred or assigned, whether or not such release is expressly stated in such transfer or assignment; provided, however, that BD Village Partners, LP shall remain obligated for any outstanding mitigation measures set forth in this Agreement or in the MPD Permit Approval as of the date of transfer or assignment that are not transferred or assigned. BD Village Partners, LP shall also remain liable for any breach that occurred prior to the transfer or assignment of rights to another party and for those portions of the Villages Property still owned by BD Village Partners, LP. BD Village Partners shall advise prospective transferees or assignees that obligations of this Agreement may apply to the property upon transfer or assignment. ~~[[NOTE -- what about YB's obligations to MV and Covington? BD should have some say in YB's assignment of those, at least, since YB is "thereupon released from~~

**The Villages Master Planned Development
Draft Development Agreement**

~~liability.” Also, if BD does not get “prior approval” to assignments, BD at a minimum should get a copy of the assignment docs so BD knows exactly which rights/obligs have been assigned.}}}}~~

15.4 GOVERNING LAW

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

15.5 SEVERABILITY AND WAIVER

If any portion of this Agreement is determined by a court of law to be unenforceable or invalid, then the remaining portions of this Agreement shall remain in effect.

15.6 AUTHORITY

Each party represents and warrants to the others that the individuals signing below have full power, authority and legal right to execute and deliver this Agreement and thereby to legally bind the party on whose behalf such person signed.

15.7 EXHIBITS

The exhibits to this Agreement are hereby incorporated herein as though fully set forth as terms of this agreement. The exhibits are:

- Exhibit “A” – Project Boundaries and MPD Site Plan
- Exhibit “B” – Legal Description and Parcel Map
- Exhibit “C” – MPD Permit Approval
- Exhibit “D” – Summary of Prior Agreements
- Exhibit “E” – City of Black Diamond Municipal Code
- Exhibit “F” – Traffic Monitoring Plan
- Exhibit “G” – Constraint Maps
- Exhibit “H” – MPD Project Specific Design Standards and Guidelines
- Exhibit “I” – High Density Residential Supplemental Design Standards and Guidelines
- Exhibit “J” – Construction Waste Management Plan
- Exhibit “K” – ~~Phases Map and~~MPD Phasing ~~Plans~~Plan

**The Villages Master Planned Development
Draft Development Agreement**

Exhibit "L" – ~~INTENTIONALLY OMITTED~~ Excerpts from Chapter 3 of MPD Permit Application

Exhibit "M" – Mine Hazard Release Form

Exhibit "N" – Villages MPD Funding Agreement

Exhibit "O" – Stormwater Monitoring

Exhibit "P" – Green Valley Road Measures

Exhibit "Q" – Maple Valley Transportation Mitigation Agreement

Exhibit "R" – Covington Transportation Mitigation Agreement

Exhibit "S" – Potential Expansion Areas

Amendments to Exhibits H, J, K, M, N, Q and R shall be processed as Minor Amendments to this Agreement pursuant to Section 10.4.2.

Formatted: Indent: Left: 0"

15.8 TIME IS OF THE ESSENCE

Time is of the essence of this Agreement.

15.9 INTERPRETATION

This Agreement has been reached as a result of ~~armsarm's~~ length negotiations with each party represented by counsel, and thus no presumption of draftsmanship shall be used in interpreting this Agreement.

15.10 INTEGRATION

This Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Waiver of any default will not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Agreement will not be deemed to be a waiver of any other provision or subsequent breach and will not be construed to be a modification of the terms of the Agreement unless stated to be such through written approval by the Party charged with so waiving or modifying the terms of the Agreement, which written approval will be attached to the original Agreement.

**The Villages Master Planned Development
Draft Development Agreement**

15.11 NO THIRD-PARTY BENEFICIARY

This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement, with the sole exception of the City of Maple Valley as described in subsection 12.10.4.

15.12 OTHER NECESSARY ACTS

The parties shall execute and deliver to each other all other further instruments and documents that are reasonably necessary to carry out and implement the Agreement.

15.13 REMEDIES

The parties may, in addition to any other rights or remedies, take action to cure, correct, or remedy any default; enforce any covenant or agreement herein; enjoin any threatened or attempted violation thereof; enforce by specific performance the obligations and rights of the parties hereto; or obtain any remedies consistent with the foregoing and the purposes of this Agreement.

15.14 NOTICE

Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given when personally delivered, or successfully transmitted by facsimile transmission, or when actually received after being deposited in the United States Mail in registered or certified form, return receipt requested, addressed as follows

To the City: _____, Mayor
City of Black Diamond
PO Box 599
Black Diamond, WA 98010
Facsimile: (360) 886-2592

Mike Kenyon
City Attorney
11 Front Street S
Issaquah, WA 98027-3820
Facsimile: (425) _____

**The Villages Master Planned Development
Draft Development Agreement**

BD Village Partners: Brian Ross
BD Village Partners, L.P.
10220 NE Points Drive, Suite ~~120310~~
Kirkland, WA 98033
Facsimile: (425) 898-2139

Nancy Bainbridge Rogers
Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Facsimile: (206) 587-2308

15.15 COUNTERPARTS

This Development Agreement may be executed in counterparts, each of which shall be deemed an original.

15.16 TERM

"Build-Out" Period of fifteen (15) years following the date of the MPD Permit Approval is established for all the Development and construction of uses in The Villages MPD as authorized in BDMC 18.98.195(A) (Exhibit "E") and RCW 36.70B.170(3)(i). The Build-Out Period may be extended up to an additional five years for any Phase of The Villages MPD pursuant to BDMC 18.98.195(E) (Exhibit "E").

The Term of this Agreement shall be from the date written in the first paragraph of this Agreement till the expiration of the Build-Out Period, as may be extended.

[Signatures appear on the following page]

**The Villages Master Planned Development
Draft Development Agreement**

CITY OF BLACK DIAMOND

_____ BD VILLAGE PARTNERS, L.P., a
Washington limited partnership
For BD Village Partners, LP

Formatted: Indent: Left: 0", Hanging: 3"

By: Yarrow Bay Development, LLC, a
_____, Mayor By: Brian Ross
Washington limited liability company, its
Title: Managing _____ General Partner (check)

Formatted: Indent: Left: 0", First line: 0",
Keep with next, Keep lines together

Attest:

By: BRNW, Inc., a Washington corporation, its
Member
_____, City Clerk

Approved as to Form: _____ By: _____
Brian Ross, President

_____, City Attorney

The Villages Master Planned Development
Draft Development Agreement

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared before me _____, to me **Brian Ross**, known to me to be _____ the President of BRNW, Inc., a member of Yarrow Bay Development, LLC, a general partner of **BD VILLAGE PARTNERS, LP**, a Washington limited partnership that executed the ~~within and~~ foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said limited partnership, for the ~~uses and~~ purposes therein mentioned, and on oath stated that _____ is ~~the he was~~ authorized to execute said instrument.

Formatted: Font: Bold

Formatted: Body Text, Justified

~~GIVEN under~~ I certify that I know or have satisfactory evidence that the person appearing before me and making this acknowledgment is the person whose true signature appears on this document.

WITNESS my hand and official seal ~~this~~ hereto affixed the day of _____, 2011, and year in the certificate above written.

Formatted: Indent: First line: 0.5"

(Print name of notary)

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

**The Villages Master Planned Development
Draft Development Agreement**

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this day personally appeared before me _____, to me known to be _____ of the City of Black Diamond, a Washington non charter code city that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that _____ is authorized to execute said instrument.

GIVEN under my hand and official seal this ____ day of _____, 2011.

(Print name of notary)
NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires _____

Page 88: [1] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Font: Bold

Page 88: [2] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Left, Line spacing: single, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Page 88: [3] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Font: Not Bold

Page 88: [4] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Adjust space between Latin and Asian text, Adjust space between Asian text and numbers

Page 88: [5] Deleted Cells	Author	4/13/2011 12:15:00 PM
----------------------------	--------	-----------------------

Deleted Cells

Page 88: [6] Formatted Table	Author	4/13/2011 12:15:00 PM
------------------------------	--------	-----------------------

Formatted Table

Page 88: [7] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Font: (Default) +Body (Calibri)

Page 88: [8] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Line spacing: single

Page 88: [9] Formatted	Author	4/13/2011 12:15:00 PM
------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [10] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [11] Deleted Cells	Author	4/13/2011 12:15:00 PM
-----------------------------	--------	-----------------------

Deleted Cells

Page 88: [12] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [13] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [14] Deleted Cells	Author	4/13/2011 12:15:00 PM
-----------------------------	--------	-----------------------

Deleted Cells

Page 88: [15] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [16] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [17] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [18] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Font: +Body (Calibri)

Page 88: [20] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [21] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 88: [22] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [23] Deleted Cells	Author	4/13/2011 12:15:00 PM
-----------------------------	--------	-----------------------

Deleted Cells

Page 88: [24] Formatted Table	Author	4/13/2011 12:15:00 PM
-------------------------------	--------	-----------------------

Formatted Table

Page 88: [25] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [26] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [27] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 88: [28] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [29] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [30] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [31] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 88: [32] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [33] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [34] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 88: [35] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 88: [36] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 88: [37] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Page 88: [38] Formatted Table	Author	4/13/2011 12:15:00 PM
Formatted Table		
Page 88: [39] Formatted	Author	4/13/2011 12:15:00 PM
Default, Centered, Line spacing: At least 10.05 pt		
Page 88: [40] Deleted Cells	Author	4/13/2011 12:15:00 PM
Deleted Cells		
Page 88: [41] Formatted	Author	4/13/2011 12:15:00 PM
Font: (Default) +Body (Calibri), Bold, Underline, Font color: Black		
Page 88: [42] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri), Underline		
Page 90: [43] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		
Page 90: [44] Formatted	Author	4/13/2011 12:15:00 PM
Line spacing: At least 10.05 pt		
Page 90: [45] Deleted Cells	Author	4/13/2011 12:15:00 PM
Deleted Cells		
Page 90: [46] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		
Page 90: [47] Deleted Cells	Author	4/13/2011 12:15:00 PM
Deleted Cells		
Page 90: [48] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		
Page 90: [49] Formatted	Author	4/13/2011 12:15:00 PM
Line spacing: single		
Page 90: [50] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		
Page 90: [51] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		
Page 90: [52] Formatted	Author	4/13/2011 12:15:00 PM
Line spacing: single		
Page 90: [53] Deleted Cells	Author	4/13/2011 12:15:00 PM
Deleted Cells		
Page 90: [54] Formatted Table	Author	4/13/2011 12:15:00 PM
Formatted Table		
Page 90: [55] Formatted	Author	4/13/2011 12:15:00 PM
Font: +Body (Calibri)		

Page 90: [57] Deleted Cells	Author	4/13/2011 12:15:00 PM
-----------------------------	--------	-----------------------

Deleted Cells

Page 90: [58] Formatted Table	Author	4/13/2011 12:15:00 PM
-------------------------------	--------	-----------------------

Formatted Table

Page 90: [59] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [60] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [61] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 90: [62] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [63] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [64] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [65] Deleted Cells	Author	4/13/2011 12:15:00 PM
-----------------------------	--------	-----------------------

Deleted Cells

Page 90: [66] Formatted Table	Author	4/13/2011 12:15:00 PM
-------------------------------	--------	-----------------------

Formatted Table

Page 90: [67] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [68] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [69] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 90: [70] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [71] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [72] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [73] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 90: [74] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Font: +Body (Calibri)

Page 90: [76] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [77] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 90: [78] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [79] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [80] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [81] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)

Page 90: [82] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Line spacing: single

Page 90: [83] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: (Default) +Body (Calibri), Font color: Black

Page 90: [84] Formatted	Author	4/13/2011 12:15:00 PM
-------------------------	--------	-----------------------

Font: +Body (Calibri)